

## Appendix 3

Argyll and Bute Council  
Comhairle Earra Ghaidheal agus Bh6id

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27 March 2019

### **Stage 2 Complaint (ref 190307-000998)**

I am writing to respond to your complaint regarding Parking Charges on Mull: Argyll and Bute Council (Off-Street Parking Places and Charges) (Isle of Mull), Traffic Regulation Order (TRO) 201. I will refer to this as the Mull TRO201 throughout this response.

I have completed my audit review with the terms of reference being those e-mailed to you on 14 March 2019. As per those terms my review focused on providing assurance that the Council's policies and procedures for implementing TROs are consistent with relevant legislation and were applied in relation to the Mull TRO201.

The terms of reference identified five control objectives, however as control objective 5 refers to consideration and approval by the Area Committee this is not applicable at this stage as Mull TRO201 is still to be presented to the Oban, Lorn and the Isles Area Committee.

Outlined below are my conclusions for the four applicable control objectives in relation to the Mull TRO201.

#### **Control Objective 1 - The Council has TRO policies and procedures that are aligned to relevant legislation**

The Council has a detailed service procedure (the procedure) in place which clearly identify the stages council officers should follow during the implementation of a TRO. The procedure was updated and approved in March 2018. To support this update a working group was established consisting of the Traffic and Development Manager, Traffic and Development Technician, Roads and Amenities Performance Manager and a senior solicitor. Part of their remit was to ensure the procedure was consistent with the relevant legislation.

My audit reviewed the work carried out by the working group, particularly in regard to whether the procedure was aligned to relevant legislation such as the Local Authorities' Traffic Orders (Procedures) (Scotland) Regulations 1999 (R1999). I have concluded that their work was carried out professionally and that the procedure appropriately reflect the relevant legislation.

In addition I have concluded that the procedure is comprehensive in relation to the:

- roles and responsibilities of Council officers and elected members
- delegated responsibilities to Area Committees being consistent with the Council's constitution
- timescales for each TRO stage being clearly identified.



I have noted the Council has no process for the procedure to be subject to periodic review to ensure it continues to reflect Government guidance and legislation. I will highlight this as a recommendation for improvement in the audit report which I will be submitting to the Audit and Scrutiny Committee on 18 June 2019. This, however, has no impact on the Mull TRO201 as the process applied to it is consistent with the legislation as it is currently drafted and the procedures have relatively recently been updated in March 2018.

**Control Objective 2: The process followed by Council officers to draft TROs complies with established policies and procedures and/or relevant legislation**

The Council is required to inform all statutory consultees of the impending TRO to enable them to make representation prior to implementation. Statutory consultees as per the Council's procedure are:

- Police Scotland
- Scottish Fire & Rescue
- Scottish Ambulance Service
- Strathclyde Partnership for Transport
- Local Multi Ward Elected Members
- Chair of Area Committee for information
- Public Transport Officer
- Strategic Transport and Infrastructure Manager
- Development Policy and Housing Strategy Manager.

I confirmed the Council was compliant with its duties regarding statutory consultation.

The TRO procedure requires the Council to undertake an investigation of existing TRO's, patterns of parking movements and parking trends and a study of accidents covering the previous three years.

I confirmed that, prior to preparing the draft Mull TRO201, the Council considered previous TRO's and there were no recorded incidents within the Fionnphort, Craignure, Bunessan or Ledaig car parks during the last three years.

In relation to parking movement and parking trends I confirmed that a range of information was considered including:

- increase in traffic volume arising from the introduction of Road Equivalent Tariff (based on vehicle figures using the ferry as it is not possible to relate these to car parks as there are no counters at the car park access/egress points)
- complaints regarding the impact of the Mull Music Festival on Ledaig Car Park
- representation from local groups and Elected Members including the Mull Community Council's Community Participation Request
- reports of abandoned cars and trailers within Ledaig Car Park and Craignure Lorry Park
- assessment of Craignure Lorry Park
- consideration of alternate layouts and permitted vehicles to suit each carpark
- feedback from a variety of council officers including Traffic & Development Officer, inspectors, parking wardens, parking supervisor, and the Network & Standards Manager.

Whilst I confirmed this information was considered to inform the draft Mull TRO201 I have formed the opinion that the Council should improve the way supporting evidence of this nature



is documented and filed. This will be a recommendation in the audit report which I will be submitting to the Audit and Scrutiny Committee on 18 June 2019. It does not, however, create a material concern in relation to the legality of the Mull TRO201 but will improve the way the Council is able to evidence its considerations.

The Council is required to ensure affected businesses and residents are consulted to ascertain their opinion on the impending TRO. I confirmed that the following local bodies and businesses were invited to respond:

- Royal Mail
- Scottish Water
- British Telecom
- Scottish and Southern Electricity Network
- Mull Community Council
- Scottish Taxi Federation
- Forest Enterprise
- National Farmers Union
- Tobermory Harbour Association
- SW Mull and Lorn Development.

No responses were received from any of these bodies. The only responses received during the consultation stage were from two elected members who requested the Council consider a period of free parking at each car park. This request was reflected in the draft Mull TRO201.

The Council are required, on completion of the consultation stage, to prepare a draft TRO detailing the order and statement of reasons with these made available via a public notice on the Council's website. I concluded the Council complied with this requirement.

### **Control Objective 3: Draft TROs are appropriately advertised during the TRO public notification stage**

The TRO procedure outlines the following required steps in relation to advertising the TRO for the public notification stage:

- use of an approved advertising agency
- authorisation of the approved advertising agency's proof copy of the draft TRO
- draft TRO advertised on Council website and made available for inspection at specified locations
- draft TRO forwarded to statutory consultees
- public notification stage to run for 21 days to allow any person, group or organisation to submit objections to the TRO
- letters of objection sent to the Council's Head of Governance and Law to be forwarded to the Traffic and Development Manager at the end of the consultation period
- correspondence received by the Traffic and Development Manager to be forwarded to the Head of Governance and Law.

I confirmed that the Council complied with all these requirements.

### **Control Objective 4: Objections to the public notification stage are managed in compliance with established policies and procedures**

The TRO procedure outlines the following required steps in relation to managing objections received during the public notification stage:



- letter of acknowledgement to be sent to all objectors
- list of all names and addresses of objectors to be forwarded to the Traffic and Development Manager
- objections to be replied to in order to try and address them.

A total of 258 objections were received over the 21 day consultation period and I confirmed that all 258 were acknowledged by the Council. The Council reviewed these and identified 22 recurring themes. A sample of 17 objections were reviewed as part of my audit and I confirmed the Council replied to the objections in an attempt to address them.

### **Other Issues**

As has been discussed during previous e-mail exchanges I recognise that your complaint raised some issues which have not been considered by my audit. My e-mail dated 18 March 2019 set out the reasons for this, with the predominant reason being that they are objections to the TRO proposal rather than an issue related to the Council's compliance with their internal processes or whether those processes are fit for purpose.

I have included the views I expressed on the 18 March 2019 e-mail in this response so as to provide a single formal response to the complaint.

Those issues, and my response are set out below.

### **Issue - There has been no meaningful engagement or consultation with the communities involved about the introduction of car parking charges and the consequences.**

Response - The TRO procedure involves a consultation stage which provides the opportunity for any member of the community, including, but not limited to, statutory consultees and community groups to identify matters that may need to be addressed in the development of the proposal. Following this is a public notification stage which provides the opportunity for any party to raise objections. The Council then has a duty to manage these objections appropriately. My audit has reviewed the Council's approach to the Mull TRO201 in relation to the consultation phases and managing the objections and I have concluded that the Council has complied with their procedure. I am of the view that the process followed has provided the opportunity for all interested parties to engage with the consultation whether that be through the first consultation phase or the public consultation phase. There has been no restrictions placed on any interested parties and objections have been managed appropriately. The submissions by the Iona Community Council in terms of your correspondence is evidence that stakeholders have been afforded the opportunity to raise issues or concerns regarding draft proposals and have these considered by the Area Committee when it comes to making its decision.

### **Issue - There was no context-specific impact assessment, nor is there any other evidence base to inform the TRO and the risks and harmful impacts it might entail.**

Response - The decision to proceed with the TRO was taken prior to Part 1 of the Equality Act 2010 coming into force on 1 April 2018 and before the enactment of the Islands (Scotland) Act 2018. Part 3 of the Act which relates to island impact assessments is yet to come into effect. More importantly, the specific process and criteria for carrying out an Island Impact Assessment has not been developed as yet or consulted on by the Scottish Government. Therefore the Council carries out a more generic impact assessment on new areas of policy that meet our duties under the Equality Act 2010 and the Fairer Scotland Duty which give



regard to affected communities. In carrying out the generic impact assessment however, and in the spirit of the Act, due regard is being given to the impact on island communities of the draft proposal so that the Area Committee is aware of these aspects when reaching its decision. Whilst I recognise the point you make about the minutes of the Islands Strategic Group meeting in October 2018 the fact that there is no current published island impact assessment process means it is not possible for me to offer an audit judgement on the performance, or otherwise, of one. This is an issue which, should the community be minded to, should be raised as objection to the TRO so that it can be considered by the elected members when they make their democratic decision at an area committee. As such I see this as an objection to the TRO proposal rather than an issue related to the Council's compliance with process which I can review as part of my audit.

Equality and Socio-Economic Impact Assessments are carried out in relation to policy proposals which enable the officers who are designing a new proposal to check that they have given due regard to all equalities implications, including socio-economic inequalities, as well as impacts on island communities. A further Equalities and Socio-Economic Impact Assessment has been undertaken in relation to the Mull TRO.

I also note that the Scottish Government wrote to Mull and Iona Community Trust regarding the Islands (Scotland) Act 2018 in relation to the Mull TRO with a copy of the letter forwarded to the Council. The Scottish Government have offered to assist the Council with any assessment. The Council have replied to the Scottish Government setting out that the TRO was part of a Council decision in February 2018 and was subject to an Equalities Impact Assessment at that time. Subsequently an Equality and Socio-Economic Impact Assessment has been completed. Whilst the Equality and Socio-Economic Impact Assessment has highlighted some issues these have been mitigated as much as is possible by recommending discounted rates for annual parking permits. The outcome of this Equality and Socio-Economic Impact Assessment will be provided to the Oban, Lorn and the Isles Area Committee to assist in its decision making.

**Issue - There was no recognition of how car parks are used currently by locals at a ferry port, nor the lifeline nature of the provision of car parks, nor use by visitors to an exceptionally remote location with direct resultant implications for a fragile visitor economy.**

Response: As I have detailed in my response to control objective 1 there was evidence that consideration was given to a range of information relating to parking movement and parking trends and I refer you back to the conclusions documented in that part of this response. The wider issues relating to the lifeline nature or impact on the economy are an extension of the impact assessment point so my response is similar to the one I have documented above. As such I see this as an objection to the TRO proposal rather than an issue which I can review as part of my audit and be considered as part of the complaints process.

**Issue - A Community Participation Request was misused to present a belated rationale and appearance of consultation, and the Council has persisted in misusing this CPR for this purpose when its weaknesses have been confirmed by a number of organizations.**

Reply: As part of my audit I considered the use of the CPR in terms of it informing the drafting of the TRO although I should stress this was done as part of a wider consideration of the extent to which the Council has considered all relevant consultation. As detailed above I am of the view that the process followed has provided the opportunity for all interested parties to



engage with the consultation whether that be through the first consultation phase or the public consultation phase. The CPR has been used to inform the TRO, as is appropriate, however I have found no evidence that it was 'misused.' The output from a CPR should be considered in much the same way as any correspondence should be considered.

**Issue - Imposition of car parking charges on Mull is completely counter to the Council's policies on economic development, supporting tourism and sustaining island communities.**

Response: I see this as an extension of your objection to the draft TRO so my response is similar to the one I have raised above. This is an issue which will be referred to as an objection to the TRO so that it can be considered by the elected members when they make their democratic decision at an area committee. As such I see this as an objection to the TRO proposal rather than an issue related to the Council's compliance with process which I can review as part of my audit and be considered as part of the complaints process.

**Issue - The Council is acting contrary to its policy commitments to implement not only those parts of the Islands Act in force but the spirit of the Act, and it is acting inconsistently through participating in a fuel poverty ICIA whilst rejecting an ICIA on the TRO.**

Response: Refer to my comments above regarding the carrying out of an island impact assessment.

I also noted you are looking for confirmation that the Area Committee will not consider or make a decision on the TRO until it can take account of the outcomes of an investigation that address your complaint. Where a complaint relates to process and has been investigated with the conclusion being the issues are unfounded there should be no barrier to members making a decision. The findings of my audit will be made available to elected members on the Area Committee prior to them considering the draft TRO. If you are not satisfied with this complaint conclusion you are entitled to raise this with the Area Committee members and it would be a matter for them to consider whether they wish to make a decision on the TRO or not. In essence they may consider the potential grounds for challenge and weigh up what the implications might be if they continue and make a decision which may be the subject of a successful challenge.

**Conclusion**

Based on the audit I have carried out and the responses provided above in relation to the issues not addressed by my audit I would advise that your stage 2 complaint is not upheld.

If you are not satisfied with this response then you have the right to ask the Scottish Public Service Ombudsman (SPSO) to consider your complaint. The SPSO is the final stage for complaints about most organisations providing public services in Scotland including councils and the service is independent, free and confidential.

SPSO's contact details are:

Freepost SPSO

Freephone: 0800 377 7330

Online: [www.spsso.org.uk/contact-us](http://www.spsso.org.uk/contact-us)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

Mobile site: <http://m.spsso.org.uk>

Scottish Public Services Ombudsman, Bridgeside House, 99 McDonald Road, Edinburgh EH?



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The SPSO cannot normally look at complaints:

- where the customer has not gone all the way through the council's complaints handling procedure;
- more than 12 months after the customer became aware of the matter they want to complain about; or
- that have been or are being considered in court.

Yours sincerely

Laurence Slavin  
**Chief Internal Auditor**



